A **MAJLIS PEGUAM MALAYSIA v. AHMAD RUSHDI OMAR**

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
PRASAD SANDOSHAM ABRAHAM JCA
ASMABI MOHAMAD JCA
B [CIVIL APPEAL NO: T-02(NCVC)(A)-817-05-2015]
14 JUNE 2017

LEGAL PROFESSION: *Roll of Advocates and Solicitors – Restoration on Roll – Appeal against – Advocate and solicitor committed serious misconduct – Advocate*
C *and solicitor struck off Roll but restored on Roll by High Court – Whether advocate and solicitor truly showed repentance of past deeds – Whether fair and reasonable for advocate and solicitor to be re-admitted to Roll – Legal Profession Act 1976, s. 107(3)*

D The respondent ('the plaintiff') was admitted as an advocate and solicitor of the High Court of Malaya on 26 September 1987. On 12 April 2007, based on complaints lodged against the plaintiff pertaining to certain misconduct committed with regards to an execution of a sale and purchase agreement ('SPA'), the plaintiff was disbarred and struck off the Roll of Advocates and Solicitors ('the Roll') of the High Court. The plaintiff subsequently filed an
E application for restoration on 13 April 2014. The plaintiff averred in his affidavit in support of the application for restoration to the Roll that it was fair and reasonable for the plaintiff to be restored to the Roll as the Plaintiff had been suspended for more than four years. The High Court allowed the plaintiff's application. Hence, the present appeal by the appellant ('the
F defendant'). The issue that arose for determination was whether it was fair and reasonable to restore the plaintiff to the Roll.

Held (allowing appeal with no order as to costs)
Per Asmabi Mohamad JCA delivering the judgment of the court:

G **(1)** The plaintiff's affidavit in support was lacking in remorse. The plaintiff's affidavit indicated that the plaintiff was using the restoration application proceedings to impugn the findings of the disciplinary committee ('DC'). The plaintiff however, made no attempts to appeal against the decision of the DC. Therefore, the plaintiff must not be allowed to justify his misconduct under the guise of improving his
H prospect of succeeding in his application for restoration. (para 29)

(2) The only documents submitted to the court were the two purported 'certificates of good character'. The purported 'certificates of good character' did nothing to illustrate that the plaintiff had repented and/
I or that there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar. The reasons offered by the plaintiff in his affidavits were not sufficient to justify the 'fair and

reasonable test'. As the plaintiff had been struck off the Roll for grossly improper conduct, he must necessarily be subject to stricter scrutiny. The court would expect more than a simple 'certificate of good character'. (paras 31 & 32)

(3) The High Court was plainly wrong in allowing the plaintiff's application for restoration. There was very limited and/or no cogent evidence for the High Court to decide in favour of restoration. The High Court did not consider the gravity of the report of the Bar Council filed pursuant to s. 107(3) of the Legal Profession Act 1976 ('LPA') and the fact that the Bar was resisting the application for restoration proved its disapproval of the plaintiff to be re-admitted into the profession within a short span of four years from the time the order to remove him from the Roll was made. (paras 36 & 39)

(4) The law does not envisage that an advocate and solicitor who had been struck off the Roll must be totally barred from returning to the profession. However, four years is too short a time for the plaintiff to be reinstated. Further, the misconduct committed by the plaintiff was very serious in nature and the court must seriously consider all the reasons to justify restoration to be supported by cogent evidence before deciding to exercise its discretion to restore the plaintiff to the Roll. (paras 41 & 42)

(5) The plaintiff had not satisfied the court that it was fair and reasonable for him to be restored to the Roll. The High Court Judge failed to judicially appreciate the evidence and/or the law presented before him in allowing the plaintiff's application for restoration. This rendered the High Court Judge's decision plainly wrong and upon scrutiny, merited appellate intervention. (para 44)

Bahasa Malaysia *Headnotes*

Responden ('plaintif') telah didaftarkan sebagai peguam bela dan peguam cara Mahkamah Tinggi Malaya pada 26 September 1987. Pada 12 April 2007, berdasarkan aduan yang dibuat terhadapnya berkaitan salah laku satu pelaksanaan perjanjian jual beli ('PJB'), plaintif disingkirkan daripada Daftarai Peguam Bela dan Peguam Cara ('Daftarai') Mahkamah Tinggi. Plaintif kemudiannya memfailkan permohonan untuk dimasukkan semula dalam Daftarai pada 13 April 2014. Plaintif menegaskan dalam afidavit sokongan permohonan untuk dimasukkan semula bahawa adalah adil dan munasabah untuk plaintif dimasukkan semula dalam Daftarai kerana plaintif telah digantung selama lebih empat tahun. Mahkamah Tinggi membenarkan permohonan plaintif. Oleh itu, rayuan ini oleh perayu ('defendan'). Isu yang dibangkitkan untuk pertimbangan adalah sama ada adil dan saksama untuk plaintif dimasukkan semula dalam Daftarai.

Diputuskan (membenarkan rayuan tanpa perintah kos)
Oleh Asmabi Mohamad HMR menyampaikan penghakiman mahkamah:

(1) Afidavit sokongan plaintif tidak menunjukkan sebarang penyesalan. Afidavit plaintif menunjukkan bahawa plaintif menggunakan prosiding permohonan dimasukkan semula untuk mencabar penemuan jawatankuasa tatatertib ('JT'). Plaintif, walau bagaimanapun, tidak membuat percubaan merayu terhadap keputusan JT. Oleh itu, plaintif tidak boleh dibenarkan memberi penjelasan tindakan salah lakunya bawah samaran untuk memperbaiki prospeknya untuk meneruskan permohonannya untuk dimasukkan semula.

(2) Satu-satunya dokumen yang dikemukakan ke mahkamah ialah kedua-dua 'sijil kelakuan baik'. 'Sijil kelakuan baik' tidak menunjukkan apa-apa yang menggambarkan plaintif telah insaf dan/atau terdapat perubahan dalam kelakuan plaintif untuk menjadikannya orang yang layak dan sesuai meneruskan amalan guaman. Alasan-alasan yang dikemukakan oleh plaintif dalam afidavitnya tidak menjustifikasikan 'ujian adil dan munasabah'. Oleh kerana plaintif telah disingkirkan oleh Daftarai untuk salah laku yang serius, dia mesti dikenakan penelitian yang lebih ketat. Mahkamah menghendaki lebih daripada sekadar 'sijil kelakuan baik'.

(3) Mahkamah Tinggi terkhilaf dalam membenarkan permohonan plaintif untuk dimasukkan semula dalam Daftarai. Terdapat keterangan yang tidak kukuh atau sangat terhad untuk Mahkamah Tinggi memutuskan kebenaran untuk dimasukkan semula dalam Daftarai. Mahkamah Tinggi tidak mempertimbangkan keseriusan laporan Majlis Peguam yang difailkan mengikut s. 107(3) Akta Profesion Undang-Undang 1976 ('LPA') dan fakta bahawa Majlis Peguam telah menentang permohonan agar dimasukkan semula membuktikan ketidaksetujuan Majlis Peguam untuk plaintif dimasukkan semula ke dalam profesion tersebut dalam jangka pendek empat tahun dari masa perintah menyingkirkan plaintif dari Daftarai dibuat.

(4) Undang-undang tidak memperuntukkan bahawa peguam bela dan peguam cara yang telah disingkirkan dari Daftarai mesti dihalang sepenuhnya daripada kembali ke profesion. Walau bagaimanapun, empat tahun adalah terlalu singkat untuk plaintif dimasukkan semula. Selain itu, salah laku yang dilakukan oleh plaintif adalah sangat serius dan mahkamah perlu mempertimbangkan dengan serius sebab-sebab untuk membenarkan kemasukan semula yang disokong oleh keterangan kukuh sebelum memutuskan untuk menggunakan budi bicara untuk memasukkan plaintif dalam Daftarai.

(5) Plaintif gagal memuaskan mahkamah bahawa adalah adil dan munasabah bagi plaintif untuk dimasukkan semula dalam Daftarai. Hakim Mahkamah Tinggi gagal mempertimbangkan keterangan dan/atau undang-undang yang dikemukakan apabila membenarkan

permohonan plaintif untuk dimasukkan semula. Ini menyebabkan keputusan Hakim Mahkamah Tinggi dengan jelasnya khilaf dan campur tangan Mahkamah Rayuan adalah wajar.

Case(s) referred to:
Awtar Singh Puran Singh v. Majlis Peguam Malaysia [2013] 3 CLJ 494 HC ***(refd)***
Chan Chow Wang v. Malaysian Bar [1986] 1 LNS 94 HC ***(refd)***
Ex parte Lenehan [1948] 77 CLR 403 ***(refd)***
Kalpanath Singh Ram Raj Singh v. Law Society of Singapore [2009] 4 SLR 1018 ***(refd)***
Lembaga Tatatertib Peguam-Peguam v. Hoo Lin Coln & Anor [2008] 4 CLJ 317 FC ***(refd)***
Motor Sports International Ltd & Ors v. Delcont (M) Sdn Bhd [1996] 2 MLJ 605 ***(refd)***
Re Lim Cheng Peng [1987] 1 LNS 104 HC ***(refd)***
Teoh Hooi Leong v. Bar Council [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451 SC ***(refd)***
Thavananthan Balasubramaniam v. Majlis Peguam Malaysia [2009] 6 CLJ 217 FC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 103C(1)(c)(iii), 103D, 107(3), (4)

For the appellant - Farez Jinnah; M/s Farez Jinnah
For the respondent - Abdul Haris Abdul Malik; M/s Abdul Haris & Co

[Editor's note: For the High Court judgment, please see Ahmad Rushdi Omar v. Malaysian Bar & Ors; Majlis Peguam Malaysia (Intervener) [2010] 1 LNS 1241 (overruled).]

Reported by Sandra Gabriel

JUDGMENT

Asmabi Mohamad JCA:

Introduction

[1] This is an appeal by the appellant against of the decision of the High Court of Kuala Terengganu dated 13 April 2015 in allowing the respondent's application for restoration to the Roll as an advocate and solicitor of the High Court of Malaya under s. 107(4) of the Legal Profession Act 1976 (LPA).

[2] The instant appeal was heard on 2 June 2016 wherein we had unanimously allowed the appeal with no order as to costs. We append below our grounds for doing so. We will refer the parties as they were described in the High Court.

Brief Facts Germane To The Appeal

[3] The facts are elucidated from the various affidavits, the judgment of the learned High Court Judge and the written submissions of respective parties. The salient facts as alluded to by the respective parties in their written submissions are adopted herein with and/or without modifications.

[4] The plaintiff was admitted as an advocate and solicitor of the High Court of Malaya on 26 September 1987. The plaintiff was practicing as an advocate and solicitor of the High Court of Malaya under the name and style of Messrs Rushdi & Co as a sole proprietor.

[5] On 12 April 2007 there were complaints lodged against the plaintiff pertaining to certain misconduct committed with regards to the execution of the sale and purchase agreement (SPA) over a housing development project in Gombak, Selangor. The circumstances of the plaintiff's disbarment can be examined in the report prepared by the defendant dated 12 November 2014 (see exh. "WTS1"at pp. 46 to 64 at Part B of appeal record jilid 2).

[6] Based on an inquiry conducted by the disciplinary committee (DC) the DC found as follows:

(a) The act of the plaintiff in backdating the second SPA to evade the operation of the amendments to the Housing Development (Control and Licensing) Act 1966 was wrongful. The plaintiff ought to have done his own research on the law applicable at the material time.

(b) The plaintiff had committed misconduct by preparing and witnessing two SPAs for two different parties with respect to the same property. The complainant in question retained the plaintiff as his solicitor and gave him his full trust and confidence to execute the first SPA.

(c) The plaintiff had unlawfully profited by receiving two separate legal fees in respect of the same property.

(d) More than 30 purchasers of the project were affected by the wrongful act of the plaintiff. Most of these purchasers are government servants who had to service the loans granted by their financiers.

(e) The act of the plaintiff in preparing and witnessing the execution of the SPAs by the same legal firm over the same property where there was earlier agreement would amount to a gross misconduct.

(f) In the case involving the plaintiff, ten complaints were lodged with the disciplinary board which facts were similar in nature. About 30 purchasers were affected by the wrongful act of the plaintiff.

(g) There was evidence of misconduct committed by the plaintiff, thus affecting the integrity and perception of the public towards the members of the legal profession.

(h) There were no mitigating factors to condone the alleged misconduct committed by the plaintiff. As the plaintiff was a senior member of the profession, having been admitted to the Bar in 1988, he is expected by the legal profession to maintain a high standard in the profession and to uphold the dignity and reputation of the legal profession.

[7] The DC having considered the above facts then recommended to the disciplinary board that the plaintiff be disbarred and struck off the Roll of Advocates and Solicitors of the High Court of Malaya under s. 103C(1)(c)(iii) of the LPA (the Roll).

[8] Having considered the case involving the plaintiff and the recommendations by the DC, on 5 November 2009, the advocate and solicitors disciplinary board made the order under s. 103D for the plaintiff to be struck off the Roll to take effect 21 days from the date of the order.

[9] The plaintiff filed the application for restoration on 13 April 2014.

[10] In his affidavit in support of the application for restoration to the Roll (at pp. 23 to 26 of the appeal record jilid 2 (Part B & C)) the plaintiff restated the background facts leading to the disciplinary action being taken against him.

[11] The plaintiff averred that it is fair and reasonable for him to be restored to the Roll as he had been suspended for more than four years from 26 November 2009.

[12] In support of his application that it is fair and reasonable for him to be restored to the Roll, the plaintiff annexed two certificates of good behaviour prepared by Mat Yusoff bin Mohamad and Rosnah binti Zakaria respectively (at pp. 23 to 26 of the appeal record jilid 2 (Part B & C)). Nothing much was alluded in these two certificates except a brief statement that the plaintiff is a person of good behaviour. These two certificates were simple certificates normally annexed in support of a fresh application for admission to the Bar.

[13] Other than the two certificates, there was nothing else averred in the affidavit in support and/or documented in the said affidavit of testimony of penitence or proof of repentance or evidence that the plaintiff had turned over a new leaf for the court to take cognizance.

The Law

[14] Section 107 of the LPA provides:

> 107. High Court may restore an advocate and solicitor
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> (1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll.
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> (2) Any application that the name of an advocate and solicitor be restored to the Roll shall be by originating motion supported by affidavit, before the High Court.
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> (3) Notice of the motion shall be served on the Bar Council which shall be represented at the hearing of the motion and shall place before the Court a report which shall include copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from, or struck off, the Roll, and a statement of any facts which have occurred since the name of the advocate and solicitor was removed from, or struck off, the Roll and which in the opinion of the Bar Council or any member of it are relevant to be considered or to be investigated in connection with the application.
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> (4) (Deleted).
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> (5) Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.

[15] The principles within which this court must be guided in disposing of the case at hand had been illustrated in a plethora of cases. In the case of *Teoh Hooi Leong v. Bar Council* [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451; [1991] 2 MLJ 190 for instance, the Supreme Court had endorsed the principles enumerated in the Singapore case of *Re Lim Cheng Peng* [1987] 1 LNS 104; [1988] 1 MLJ 231 as follows:

(a) The court may order restoration to the Roll the name of an advocate and solicitor, which had been removed from or struck off, the Roll if it thinks fit. However, this discretion must be exercised judicially.

(b) The Legislature does not provide the time frame within which an applicant ought to apply for restoration after having been removed from the Roll and/or struck off the Roll. However, in arriving at its decision to restore the applicant to the Roll the lapse of time between the date of the order striking the solicitor off the Roll and the date of his application for restoration to the Roll is filed in court is a relevant consideration.

(c) The court must consider the views of the body entrusted by the Legislature for the proper management of the affairs and conduct of the profession.

[16] In a nutshell, in dealing with the application of this nature, the court must exercise its discretion judicially after taking into consideration the lapse of time between the date of the order striking out the advocate and solicitor off the Roll and the date of his application for restoration. The court must also consider the views of the body entrusted by the Legislature to regulate the discipline, conduct and affairs of the members of that body, in West Malaysia, the Bar Council.

[17] It was further stated, in the same case that the onus is on the applicant to satisfy the court that he is a fit and proper person to have his name restored to the Roll. In *Chan Chow Wang v. Malaysian Bar* [1986] 1 LNS 94; [1986] 2 MLJ 159, the court held that in the public interest, the applicant making an application for restoration has to demonstrate to the court that he will not likely repeat these offences if he is re-admitted. The onus is on the plaintiff to show that:

(a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;

(b) he is truly penitent; and

(c) he has made restitution.

[18] The operative words in the LPA is if the court thinks it is "fair and reasonable", the court may restore to the Roll the name of an advocate and solicitor which had been removed from, or struck off, the Roll.

[19] What is "fair" in the context of the LPA had been illustrated in the above quoted case of *Teoh Hooi Leong v. Bar Council, Malaysia (supra)*. In order to exercise its discretion, the court has to strike a balance between the interest of the members of the public, the interest of the court and also the interest of the particular applicant making the application for restoration to the Roll.

[20] Therefore, any decision the court is going to make must be fair not only to the applicant making the application for the restoration but also to the members of the public and the court itself. It is important that the court takes into consideration the interest of the members of the public as the Legislature has the duty to protect the public from errant and unscrupulous lawyers. This is so because the restoration to the Roll of an advocate and solicitor will have the effect that the applicant is re-admitted into the profession and the members of the public would have to renew their professional relationship with the applicant.

[21] The decision must also be fair to the court as when the applicant is re-admitted, he would be an officer of the court and the public expects that the court would ensure upright and honourable conduct on the part of its officers. (See *Ex parte Lenehan* [1948] 77 CLR 403).

[22] Lastly, the court must also consider the interest of the applicant and must not treat the removal of the applicant from the Roll as permanent and that the door for the applicant to return to the profession is shut forever.

[23] In the case of *Teoh Hooi Leong v. Bar Council, Malaysia (supra),* which was quoted by the Federal Court in *Thavananthan a/l Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217; [2010] 3 MLJ 316 at p. 323, the Federal Court had reiterated the duties of the court in dealing with an application under s. 107 of the LPA as follows at p. 456 (CLJ); p. 113 (MLJ):

> The duty of the court in a case like this is to exercise its discretion having regard to the materials available before it and the particular facts of the case. The question should be seen as an exercise of discretion according to particular facts of the case. It should never be regarded as a principle laid down as a rule of law that an advocate and solicitor who has been struck off the roll for dishonesty can never be reinstated.

[24] The Supreme Court in *Teoh Hooi Leong (supra)* held that the court must arrive at a reasonable decision. The court went on to illustrate the meaning of "a reasonable decision" as "… a decision which is based on reasonable grounds. A reasonable decision **must be supported by cogent evidence and not based on conjecture or speculation**." (emphasis added)

[25] Therefore, it is clear from the above, in exercising his discretion under s. 107(4) of the LPA, the learned judge of the High Court must be guided by the principles illustrated herein and ought to have examined this case on its own special factual circumstances.

The Issue

[26] There is only one issue for the court to consider:

> Whether it is fair and reasonable to restore the Plaintiff to the Roll.

The High Court Decision

[27] In allowing the plaintiff's application for restoration, the learned judge considered the following:

A (a) The plaintiff was struck off from the Roll for more than four years. Four years is a long time for him to repent and the plaintiff must be given the chance to resume his practice.

(b) The plaintiff had given the undertaking to the court that he would do something useful for the legal profession.

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(c) The disbarment as a result of professional misconduct is not intended to be permanent or perpetual.

(d) The plaintiff's application was supported by two certificates of good behaviour prepared by two individuals, Encik Mat Yusoff Mohamad

C and Puan Rosnah Zakaria respectively.

(e) The plaintiff is truly penitent and he had assured the court that he will try to do his best if he is given the chance to resume his practice.

(f) Unlike Thavanathan as in *Thavanathan Balasubramaniam v. Majlis*

D *Peguam Malaysia* [2009] 6 CLJ 217; [2010] 3 MLJ 316, the plaintiff was not convicted by any criminal court in Malaysia.

The Appeal

[28] The principles which justify the appellate court in intervening with the

E exercise of a discretion vested in the learned judge had been illustrated in the case of *Motor Sports International Ltd & Ors v. Delcont (M) Sdn Bhd* [1996] 3 CLJ 483;[1996] 2 MLJ 605 where His Lordship Gopal Sri Ram JCA (as His Lordship then was) said:

> We are aware that the orders appealed from were made in the exercise
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> F of a discretion vested in the learned judge. This court, in an appeal such as this, is not possessed of any original discretion. Its initial function is one of review only. It is only after an appellant has demonstrated that the judge to whom the law entrusts the original discretion has erred in principle, or has taken into account an irrelevant consideration, or has failed to take into account a relevant consideration when arriving at his
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> G decision, or that the order made has caused an injustice, that this court becomes entitled to exercise an original discretion.

(Also refer to *Lembaga Tatatertib Peguam-Peguam v. Hoo Lin Coln & Anor* [2008] 4 CLJ 317; [2009] 3 MLJ 757 (FC)).

[29] We have perused all the affidavits filed herein for the purpose of the

H application for restoration and we found that the plaintiff's affidavit in support was lacking in remorse. A perusal of the plaintiff's affidavit in reply to the defendant's affidavit, clearly indicate that the plaintiff was using the restoration application proceedings to impugn the findings of the DC (see pp. 29 to 33 of appeal record jilid 2 (Part B & C)). The plaintiff however,

I made no attempts to appeal against the decision of the DC. We are of the view that the plaintiff must not be allowed to justify his misconduct under the guise of improving his prospect of succeeding in his application for restoration.

[30] From the tone of the language in the plaintiff's affidavit in reply to the defendant's affidavit in reply, the plaintiff became completely defensive and disclosed a propensity to justify his misconduct. This showed the plaintiff was not penitent at all. Therefore, the plaintiff clearly had failed to discharge the burden of proving penitence which the law placed on him.

[31] The only documents submitted to the court was the two purported "certificates of good character". The purported "certificates of good character" did nothing to illustrate that the plaintiff had repented and or turned over a new leaf or that there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar. The reasons offered by the plaintiff in his affidavits are not sufficient to justify the "fair and reasonable test". These are not valid reasons when compared to the public's and court's interest. The plaintiff has to show that public interest will be served by the restoration of the plaintiff.

[32] There were no testimonials of the plaintiff's character beyond the bare statement of good character. There was no elaboration or explanation as to why the plaintiff was said to be of good character for the purpose of the application for restoration. As the plaintiff had been struck off the Roll for grossly improper conduct, he must necessarily be subject to stricter scrutiny than that of a new entrant to the legal profession who has no adverse record. The court would expect more than a simple "certificates of good character" (see *Awtar Singh Puran Singh v. Majlis Peguam Malaysia* [2013] 3 CLJ 494; [2013] 1 MLJ 817).

[33] There was no evidence that the plaintiff had rehabilitated himself. In *Kalpanath Singh Ram Raj Singh v. Law Society of Singapore* [2009] 4 SLR 1018 the court emphasised for the purpose of an application for reinstatement, one of the critical factors the court must take into consideration is the extent to which the applicant is said to have rehabilitated himself. By this, the court meant "nothing short of full rehabilitation would do". In the above case, the court explained the following:

> It would be seen that, while the focus of rehabilitation is in a sense individual-centric, it is not entirely so because implicit in that consideration is really the desire on the part of the Court to ensure that the applicant is not likely to revert to his previous wrongful ways … An errant advocate and solicitor, who is not fully rehabilitated, continues to pose a threat to society and will cast a pall of doubt over the integrity and reputation of the legal profession.

[34] From the above quotation, it is clear that an applicant in a restoration application must demonstrate to the court that he is fully rehabilitated as the court must not only be concerned with the individual interest only but the interest of the public at large as well as the interest of the profession. We have perused the record before us and found that there is no evidence that the plaintiff is fully rehabilitated.

[35] Another crucial consideration is whether the applicant has made restitution. Again, we found there was no such evidence in the record before us.

[36] On the totality of the evidence before us, we are satisfied that the High Court was plainly wrong in allowing the plaintiff's application for restoration. We found that there was very limited and or no cogent evidence for the High Court to decide in favour of restoration. We also observe that the High Court did not consider the gravity of the report of the Bar Council filed pursuant to s. 107(3) of the LPA 1976.

[37] There were no testimonials of persons who can attest to the integrity and good character of the plaintiff. What was handed to the court was a simple "certificates of good behaviour" meant for fresh application to the Bar.

[38] Even if the court considers that the complainants had settled the matter eventually with the developer based on the court order in question, it is simply that the lost time and suffering caused to the complainants as a result of the plaintiff's actions, that must be considered in favour of the complainants.

[39] The court must consider the view of the Bar Council. The fact that the Bar was resisting the application for restoration proved its disapproval of the plaintiff to be re-admitted into the profession within a short span of four years from the time the order to remove him from the Roll was made to the time he submitted his application for reinstatement under s. 107 of the LPA.

[40] It is not the intention of the LPA to impose a permanent sanction on the plaintiff and prevent him from returning to his profession. That was the precise reason s. 107 of the LPA was enacted to offer a second chance to an advocate and solicitor who had turned over a new leaf. In this case, there was a lapse of only four years from the time the order to remove him from the Roll was made to the time he submitted his application for reinstatement under s. 107 of the LPA.

[41] In the case of *Thavanathan Balasubramaniam v. Majlis Peguam Negara (supra)* the Federal Court held that the court ought to examine the trend and pattern of sentences imposed by other courts as a guide to decide whether to restore the plaintiff to the Roll. The Federal Court had also held that it is grossly unfair and unreasonable for the applicant to be left in a limbo and to endure the long wait before he could be reinstated. The law too does not envisage that an advocate and solicitor who had been struck off the Roll must be totally barred from returning to the profession. Notwithstanding the above principle, we however feel based on the facts before us, four years is too short a time for the plaintiff to be reinstated to the profession after committing a serious misconduct as illustrated herein.

[42] The application for reinstatement to the Roll is an exception and not a general rule. The court must take cognizance of the fact that offences involving advocates and solicitors are on the rise and will continue to rise as the Bar grows and the market conditions become increasingly competitive. The misconduct committed by the plaintiff is very serious in nature and the court must seriously consider all the reasons to justify restoration to be supported by cogent evidence before deciding to exercise its discretion to restore the plaintiff to the Roll.

[43] Having given this matter careful consideration, we are of the view, that for the reasons we have highlighted above, this is a case in which the learned High Court Judge erred in principle. Therefore, this appeal falls within the category of cases in which appellate interference is justified as enunciated in the case of *Motor Sports International v. Delcont (supra)*.

Conclusion

[44] We have examined the appeal records and perused the written submissions, heard the oral arguments and after taking into consideration the circumstances illustrated above and guided by the relevant principles of law enumerated in the cases highlighted above, we unanimously came to the conclusion that the plaintiff had not satisfied the court that it is "fair and reasonable" for the plaintiff to be restored to the Roll. We were constrained to hold that the learned judge failed to judicially appreciate the evidence and/or the law presented before him in allowing the plaintiff's application for restoration. This had rendered his decision plainly wrong and upon curial scrutiny merit our appellate intervention.

[45] Based on the aforesaid, we unanimously allowed this appeal with no order as to costs. The decision of the High Court was set aside. Deposit to be refunded.